

The Formalities of an Arbitration Award

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Claim and facts of the case

Party A filed a suit before the Dubai Court of First Instance seeking a judgment confirming an arbitration award in which Party B and Party C, a joint venture, were ordered to pay Party A the amount of AED 400,000 plus 9% interest from the due date of 20 July 2003, until full payment in addition. Part B was also awarded the costs of the arbitration.

Party A had sought a judgment against Party B and Party C in relation to a subcontract for the supply and installation of lifts in a Residential Complex in Al Nahda, Sharjah.

Upon completion of the works by Party A, Party B and Party C had refused to pay the final installment payment of AED 400,000 (which represented the amount withheld against maintenance works) without any legal justification. In the first hearing before the Court, Party B pleaded the existence of an arbitration clause in the agreement. Accordingly, Party A amended its case and requested the Court to appoint an arbitrator to conclude the dispute between the parties.

The sole arbitrator's award required Party B and Party C to pay jointly and severally the amount of AED 400,000 together with 9% interest per annum from the due date until full payment to Party A. Further, Parties B & C were required to jointly and severally pay AED 14,000 as arbitration fees.

Accordingly, Party A filed a case with the Dubai Courts seeking to enforce the award. Party B and Party C filed an interlocutory application requesting the Court to invalidate the award/set aside the award.

Court of First Instance

The Court of first instance ruled in favor of Party A and ratified the arbitral award. Consequently, Parties B & C appealed to the Court of Appeal.

Court of Appeal

In reversing the lower court's decision, the Court of Appeal ruled that the arbitration award should be set aside. Subsequently, Party A appealed to the Court of Cassation.

The Court of Cassation (Date of Judgment 17 November 2009)

Party A argued that the Court of Appeal erred in its decision to overturn the decision of the Court of First Instance. The sole reason proffered by the Court of Appeal was that the arbitrator did not sign each and every page of the arbitral award. Party A referred to Article 212 of the UAE Civil in arguing that one of the essential requirements of an arbitration award is the signature of the arbitrator who has issued the award.

Article 212(5) provides as follows:

"The arbitrators' award shall be passed by a majority and shall be made in writing and accompanied by the dissenting vote. In particular, the award shall contain a copy of the arbitration agreement, a summary of the statements of the parties, their documents, the grounds and context of the award, the date and place of issue and the signatures of the arbitrators. Should one or more arbitrators refuse to sign the award, such refusal shall be stated in the award; provided, however, that the award shall be valid if signed by a

majority of the arbitrators.”

Article 212(7) provides as follows:

“The award shall be deemed to have been issued from the date of signing the same by the arbitrators.”

The Court of Cassation upheld Party A’s defense. The Court determined that one of the essential requirements of an arbitration award is the signature, on the award, of the arbitrators who have issued the award. The Court further explained that from a legal point of view; the signature is the only evidence of the existence of the award, which refers to both the ultimate decision and the grounds reached in support of that ultimate decision. The Court of Cassation therefore found that the arbitrators should sign both ultimate decision and the grounds reached in support of that ultimate decision. Crucially, the Court of Cassation held that a failure to do so would render the award invalid.

The Court of Cassation found one exception to this crucial and important rule. Where the grounds or reasoning for the ultimate decision are continued on the same page as the relief ultimately ordered, and the page containing the ultimate relief is signed, that signature shall be deemed to cover the reasoning for the granting of the relief.

If the reasoning and grounds for the ultimate decision and the ultimate decision itself appear on separate pages, then all pages of the award should be signed by all arbitrators. Failing this, such award shall be invalid.

In this case, the final page of the award, which contained the ultimate decision, also contained part of the reasoning for the ultimate decision. The final page was signed; therefore the signature was deemed to cover both the grounds for the ultimate decision and the ultimate decision itself. Importantly, the Court of Cassation ruled that the format of the award complied with Article 212.

The importance of this judgment cannot be underestimated. Many English translations of Article 212 do not outline the peculiarities applicable to the formalities of awards in the detail expressed by the Court of Cassation. To ensure the validity of arbitration proceedings, it is essential that this Article be read and applied in connection with the reasoning of the Court of Cassation.

The Court of Cassation reversed the finding of the Court of Appeal.